

**SENATE . . . . . No. 801**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Gale D. Candaras**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act relative to infectious disease control**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Gale D. Candaras	First Hampden and Hampshire
Angelo J. Puppolo, Jr.	12th Hampden
Christine E. Canavan	10th Plymouth
Jennifer M. Callahan	18th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01215 OF .]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO INFECTIOUS DISEASE CONTROL.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 111 of the General Laws is hereby amended by adding the following new  
2 section:

3           Section 111N. (a) Notwithstanding the provisions of any general or special law to the contrary,  
4 any person exposed to the blood or other bodily fluid of an offending person may petition the superior  
5 court for an order compelling: (1) the production of medical, insurance, or other records to determine the  
6 presence of any infectious disease, as defined by the department of public health, in the blood or other  
7 bodily fluid of the offending person; and (2) the testing of the offender's blood for infectious disease.

8           (b) The court shall order the production of the medical, insurance, or other records and may order  
9 the testing of the offender's blood if: (1) exposure to the blood or other bodily fluid of the offending  
10 person substantially threatens the health of the petitioner; (2) the exposure to the blood or other bodily  
11 fluid is a direct result of conduct by the offending person; and (3) reasonable suspicion exists to believe  
12 that the conduct is or may be a violation of state or federal criminal law, even if a criminal investigation  
13 or prosecution relating to the conduct has not been or will not be commenced in the matter.

14           (c) The order of production shall direct the custodian of the medical, insurance, or other records

15 to produce immediately them for in camera inspection by the court. After conducting the inspection of the  
16 records and blood test results, the court shall notify the petitioner immediately of the presence or absence  
17 of an infectious disease in the blood or other bodily fluid of the offending person. The petitioner shall not  
18 disclose the identity of the offender, nor shall the petitioner disclose the results of the test to any person,  
19 except as otherwise necessary for the petitioner to receive medical treatment.

20 (d) The court shall seal the records of the proceedings, including any judicial decision, upon the  
21 conclusion of the proceedings. The clerk shall take all necessary steps to ensure the confidentiality of the  
22 sealed records. The court may allow publication of its decision if it has removed the names of the  
23 petitioner and the offending person from the decision.

24 (e) The court may enter an order of production only after the offending person is given notice and  
25 an opportunity to be heard in the matter. The hearing on the petition for the order may not commence  
26 without the offender receiving notice of the hearing, or no earlier than 48 hours after the offender receives  
27 the notice, unless the petitioner demonstrates delay will result in immediate and irreparable harm to the  
28 petitioner's health or the infeasibility of providing notice to the offender.

29 (f) An order granting or denying the production of medical, insurance, or other records or an  
30 order disclosing or refusing to disclose the contents of the records to the petitioner is immediately subject  
31 to appeal and stays or injunctions pending appeal as authorized by law.

32 (g) The court may award reasonable attorney fees, costs, and expert witness expenses to any  
33 prevailing party in any action or proceeding under this act. In awarding attorney fees and expert witness  
34 expenses, the court shall take into account whether the offending party, prior to the commencement of the  
35 hearing, voluntarily produced all medical, insurance, or other records for the court's in camera inspection  
36 to determine the presence of an infectious disease.

37 (h) The testing on the offender shall be performed under the direction of the department of public  
38 health. The results of an infectious disease test performed on the offender pursuant to this section shall not  
39 be admissible in any criminal or juvenile proceeding arising out of the alleged offense. The identity of the  
40 offender subject to testing shall be kept confidential in accordance with the provisions of section 70 of

41 chapter 111.

42 (i) Notwithstanding the provisions of any general law or special law to the contrary, no hospital,  
43 or agent, employee, administrator, doctor, official or other representative of a reporting institution shall be  
44 held jointly or severally liable either as an institution, or personally, for reporting in good faith pursuant to  
45 the requirements of this section. All parties, provided they have operated in good faith, shall otherwise be  
46 afforded total immunity from civil or criminal liability as a result of fulfilling the provisions of this  
47 section.